

Inside Eighth Circuit

- This is a significant decision that changes the landscape on the way we look at permits at facilities that blend. The Agency will faithfully apply the decision within the Eighth Circuit. We are still trying to work through potential issues.
- All NPDES permits, including those for POTW discharges, need to have a bypass provision that is at least as stringent as EPA's regulations at 40 CFR 122.41(m).
- For a facility that blends, the permit/fact sheet should have a clear identification of the treatment train that will be used during dry and wet weather.
- Permits for POTWs that blend will not have internal permit limitations (unless end-of-pipe effluent limits are impracticable) , only end-of-pipe limits.
- NPDES permits are to require monitoring to yield data that is representative of the monitored activity (see 122.48(b)). For facilities that blend during wet weather, permits should clearly specify that compliance monitoring include end-of-pipe monitoring when wet weather treatment trains are in operation.
- In the Eighth Circuit, the bypass provision does not impose second secondary treatment standards on side-stream treatment prior to blending. In addition, the fact that side-stream treatment does not provide biological treatment does not trigger the bypass provision.

Outside of Eighth Circuit

Deliberative Process / Ex. 5